

REMARKS

The present Amendment is in response to the Official Action mailed January 16, 2008. Claims 1, 15, and 17 have been amended, and claims 8-12, and 18 were previously canceled. Therefore, claims 1-7, 13-17, 19, and 20 remain currently pending in the present case. The following sets forth Applicants' remarks pertaining to the currently pending claims and the outstanding Action.

As an initial matter, Applicants respectfully thank the Examiner and her supervisor for conducting the telephone interview of April 15, 2008 with Applicants' counsel. In that discussion each of currently pending independent claims 1, 15, and 17 were discussed with regard to U.S. Patent No. 6,174,311 to Branch et al. ("Branch"), which was utilized by the Examiner in the outstanding Action in rejecting such claims as anticipated under 35 U.S.C. § 102(b). In the discussions, Applicants' counsel put forth arguments as to the differences between the present invention and that taught in Branch. Most notably, Branch is directed to inserting fusion devices, whereas the present invention is directed towards the insertion of a multi-piece articulable implant. Furthermore, Applicants' counsel argued as to the lack of disclosure in Branch of certain of the limitations set forth in the currently pending claims. Ultimately, it was decided that amending independent claims 1, 15, and 17 to make it clear that the present invention is directed towards the insertion of a two-piece articulable implant would overcome the rejections set forth in the outstanding Action. The above-amendments of claims 1, 15, and 17 have been made in accordance with this agreement.

Specifically, independent claim 1 has been amended to require that the insertion plate be used in engaging first and second members of a two-piece intervertebral disc replacement device, and independent claims 15 and 17 have been amended to

require that the first and second members of the intervertebral disc replacement device set forth in those claims be engagable with each other and operable to articulate with respect to each other. Because each of these independent claims also include limitations directed toward the simultaneous insertion of the two pieces of the intervertebral disc replacement device of the present invention, both Examiners agreed that amending the claims in this fashion overcomes the prior art cited in the outstanding Action. As such, Applicants respectfully submit that above-amended independent claims 1, 15, and 17 constitute allowable subject matter. Because the remaining dependent claims properly depend from one of independent claims 1, 15, and 17 (or an intervening claim), such claims also constitute allowable subject matter. Although the Examiners indicated that an update search and review of the prior art would be necessary, Applicants request allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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